

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

"KARINA SMITH" AND "ELIJAH  
MOSES", individually and on  
behalf of others similarly situated, CASE NO. 8:09-cv-01628-JDW-MAP

Plaintiff,  
v.

JEFF RAINEY, SUNNY HALL,  
HILLSBOROUGH KIDS, INC.,  
a Florida corporation,  
FIRST HEALTH, the AGENCY FOR  
HEALTH CARE ADMINISTRATION, HOLLY  
BENSON, individually and as Secretary AMENDED COMPLAINT  
for the AGENCY FOR HEALTH CARE FOR DAMAGES  
ADMINISTRATION, the FLORIDA (Jury Trial Requested)  
DEPARTMENT OF CHILDREN AND (Class Representation)  
FAMILIES, GEORGE SHELDON,  
individually and in his official  
capacity as SECRETARY of the  
DEPARTMENT OF CHILDREN AND  
FAMILIES and NICHOLAS COX,  
individually and in his capacity  
as Regional Administrator of the  
DEPARTMENT OF CHILDREN AND  
FAMILIES,

Defendants.

\_\_\_\_\_/

Plaintiff "KARINA SMITH"<sup>1</sup> and "ELIJAH MOSES"<sup>2</sup>,  
individually and as class representatives sue Defendants JEFF  
RAINEY [Rainey], SUNNY HALL [HALL], HILLSBOROUGH KIDS, INC.

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<sup>1</sup> The name of Plaintiff "Karina Smith" is a pseudonym, to protect her privacy.

<sup>2</sup> The name of Plaintiff "Elijah Moses" is a pseudonym, to protect his privacy.

[collectively HKI], FIRST HEALTH [HEALTH], the AGENCY FOR HEALTH CARE ADMINISTRATION [AHCA], HOLLY BENSON [Benson], the FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES [DCAF], GEORGE SHELDON [SHELDON] and NICHOLAS COX [COX], and alleges:

1. This is an action for injunctive relief and for damages that exceed \$15,000.00, and for other relief within the jurisdiction of this Court.

#### Jurisdiction

2. The Court has federal question jurisdiction over the subject matter pursuant to 28 U.S.C. §1331 regarding the claims under the Americans with Disabilities Act [ADA] and the Federal Early Periodic Screening Diagnosis and Treatment Acts [EPSDT], and pendent jurisdiction over the state claim.

#### Nature of Action

\_\_\_\_\_ 3. This action arises from past, current and ongoing violations of the rights of children being held in the Florida foster care system in Hillsborough County.

4. Suit is brought pursuant to and related to various provisions of state and federal statutes, including but not limited to the Americans with Disabilities Act, Chapter 39, and 409 Florida Statutes, the state and federal Early Periodic Screening Diagnosis and Treatment [EPSDT] Acts, and Florida common law.

5. Specifically, many children in the foster system in Hillsborough County have been kept in foster care for excessive lengths of stay. Being raised in the system causes or contributes to mental health instabilities and mental health problems.

6. In Hillsborough County excess lengths of stay and the resulting mental disabilities generally result in foster children in need of stability and good permanent families instead of being put on excessive inappropriate dangerous mind-altering experimental, off-label psychiatric medications as chemical restraints, for "behavior control" problems.

7. Child specific targeted adoptive parent recruitment is a service to be provided to all foster children whose parents' rights have been terminated.

8. It is and has been the policy in the Hillsborough County foster system that, when children are viewed as having mental disabilities or as mentally unstable, or are transferred by the system operators to out-of-county placements, HKI stops child specific targeted adoptive parent recruitment, if any such recruitment has started.

9. This is the case even though there are at least two recruitment positions in Hillsborough paid by the Dave Thomas Foundation to make sure child specific targeted recruitment is

provided for all children in the system whose parents' rights have been terminated; the funding for these targeted adoption positions includes state, federal and private funds.

Overview of Relief Sought

10. In summary, for the Plaintiffs and other children similarly situated, Plaintiffs seek:

As to the Plaintiffs and the Class

a. An immediate injunction prohibiting the HKI and DCAF Defendants from further denial of access to child specific targeted adoptive parent recruitment services for the two minor Plaintiffs and all other Hillsborough foster youngsters similarly situated;

b. An injunction compelling performance of the DCAF-HKI contract obligations for the two minor Plaintiffs and all others similarly situated regarding:

1) length of stay;

2) prompt movement of all class members to good permanent families following termination of parental rights;

c. An injunction compelling all Defendants to make sure that the judicial consent provisions of Section 39.407 are complied with before Plaintiffs and others similarly situated are subjected to mind-altering

medications; and

As to the Named Plaintiffs

d. Damages sustained by the minor Plaintiffs as a result of the Defendants' improper acts and omissions.

Venue

11. The majority of the decisions made relating to the minor Plaintiffs, and other children similarly situated, by foster system and related officials were made in Hillsborough County, and Hillsborough County is where the majority of the Plaintiffs' claims arose.

Conditions Precedent

12. All conditions precedent have been satisfied, complied with or waived, including but not limited to applicable notice provisions.

13. Before the filing of this action, Plaintiffs have sought without success the cessation of the unlawful practices that have caused and continue to cause harm to the Plaintiffs and others similarly situated.

Parties

\_\_\_\_\_ 14. The Plaintiffs are children in the foster system in Hillsborough County; each Plaintiff has been diagnosed with, mental health disabilities and impairments that substantially limit one or more major life activities, including but not

limited to learning, concentrating, thinking, communicating and working appropriately.

15. The Plaintiffs also are regarded and treated by all Defendants as having mental health impairments, and have been so regarded for more than six months.

16. Defendant HKI is the Florida corporation serving as the contractual operator of the Florida foster care system in Hillsborough County.

17. Defendant Rainey is the president and chief executive officer of HKI and, in that capacity, is responsible for making sure HKI acts in a lawful manner in caring for the foster children in its physical custody.

18. Defendant Hall is the chief operating officer of HKI and, in that capacity, is responsible for making sure HKI's handling of each foster child's case file and providing for each child's needs is done in a manner consistent with Florida and federal law.

19. Defendant AHCA is the state agency responsible for administration of the Florida and federal Medicaid system.

20. Defendant Health is a private corporate entity responsible to and acting on behalf of AHCA for serving as a gatekeeper responsible for declaring foster children such as Plaintiffs and other children similarly situated eligible for

certain physical and mental health care.

21. Defendant AHCA is the Florida agency responsible for proper administration of the state and federal Medicaid funds.

22. Defendant Benson serves as Secretary of AHCA and, in this capacity, is responsible for making sure that Medicaid funds are being spent properly and for appropriate needs of children such as the Plaintiff, and is responsible to make sure Medicaid funds do not result in the victimization or financial exploitation of foster children.

23. Defendant DCAF is the State agency currently in charge of supervising and monitoring the operation of the Florida foster care system. It is also the entity in whose permanent legal custody the Plaintiffs and other foster children similarly situated are kept until they are moved to permanency with a good adoptive family.

24. Defendant Sheldon is the Secretary of DCAF, responsible to make sure that children such as Plaintiffs and others similarly situated being raised under the supervision of DCAF and its contract providers are raised properly and safely, free from violations of their rights and the law.

25. Defendant Cox is the Administrator in charge of the Department's operation in the Hillsborough area, and is responsible for making sure that Hillsborough children such as

Plaintiffs are moved to good permanent families expeditiously and are properly cared for during what should be a short stay in the temporary status known as foster care.

Class Representation Allegations

\_\_\_\_\_ 26. This class action is brought pursuant to Federal Rule 23(b)(2).

27. The questions of law and fact common to the claims of the class representatives and the claims of each class member predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy, in that:

a. There are some 2,900 Hillsborough County children for whom Defendants HKI and DCAF are responsible.

b. Of these, more than 2,400 children have been out of their own homes in the "temporary" custody of HKI and DCAF; of these, 7 children have been in care for 15 years, some 60 children have been in care for more than 10 years, and hundreds of others have been in care for more than two years, after termination of their parents' legal rights.

c. Each of the members of the class is a Medicaid recipient.



**Rule [insert federal ct rule #]**

28. The conditions precedent of Federal Rule of Civil Procedure 23(a) are met in that:

1. The members of the class are so numerous that separate joinder of each is impracticable;

2. The claims of the representative Plaintiff raise questions of law and fact raised by the claim of each class member;

3. The claims of the representative parties is typical of the claim of each member of the class; and

4. The representative Plaintiffs can fairly and adequately protect and represent the interests of each member of the class.

Typicality

29. The class consists of all Hillsborough foster children whose parents' rights are terminated; the children are in the legal custody of DCAF and physically placed with Hillsborough Kids pursuant to Chapter 39 and Sections 401.1671 and 401.1675, Florida Statutes.

30. All class members are deprived of their liberty interests by the Defendants not as a result of any wrongdoing of the children, but only because the adults responsible for

them abused, neglected or abandoned them.

31. Each class member is deprived of his or her liberty interests as all are held as captives by the Defendants, to be moved around by the Defendants as the Defendants wish, for as long as the Defendants want.

32. Every class member has an ongoing dependency case in Hillsborough County.

33. A substantial number of the class member children have no guardian ad litem acting on their behalf in the dependency court, even though the appointment of and representation of a guardian ad litem in the dependency proceedings is mandatory by law.

34. Many class member children are being administered dangerous, inappropriate mind-altering psychotropic medication, primarily for behavior control.

35. Recent statements by DCAF's Secretary have made it clear that numerous foster children are being given psychiatric medications improperly for behavior control, apparently as chemical restraints.

36. Other recent statements by DCAF's Secretary indicate that at least 16% of the youngsters being given dangerous medication as chemical restraints are being given the psychiatric medications unlawfully, without the required

informed consent orders, which cannot be properly entered unless the physician has been provided with all of the child's medical records and there is a full hearing regarding the dangers, and risks to the child of the use of the recommended medication.

37. Very few of the class member children have an attorney representing them in the dependency proceedings, even though legal representation is the only practical method through which the class member children's positions, desires, preferences and needs can be properly advocated to the dependency court.

38. Although each class member is the subject of a dependency proceeding, the lack of legal representation makes it unlikely that any question of law or fact raised here will be litigated or adjudicated in the pending dependency proceedings. [Theoretically, the assistant attorneys general who serve as attorneys for HKI and DCAF could raise such issues, but, by contract, their "client" is the foster system operator, not the children captives].

39. Even when the class members have their own representation, the children get trapped in the system as a combination of the misconduct of the HKI Defendants in not having adequate good foster houses and DCAF's improper

acquiescence, there are limits to the ability of the children's representatives to protect the children's rights to permanency.

40. No difficulties should be encountered in the management of the Plaintiff class claims, given that the systemic data details the foster system's unconstitutional treatment of each class member without the need of individual illustrative details for any class members other than the representative Plaintiffs.

Common Questions of Law and Fact

41. There are questions of law and fact that are common to the claim of the representative party and the claim of each member of the class:

a. Contrary to American jurisprudence the representative party and each child class member is being held in state custody by Hillsborough Kids and DCAF not for any misconduct of Plaintiff or the children class members but for the misconduct of some adult person over whom the Plaintiffs and other children have no control;

b. The representative Plaintiffs and each child class member are adversely impacted by DCAF tolerating Hillsborough's arranging excessive lengths of stay; more than 50% of the children in custody, including the

representative Plaintiffs, have been held in custody for more than two years;

c. As operated by HKI under DCAF's supervision, children 8 years old and older [including the representative Plaintiffs] are kept in care even longer than younger children;

d. HKI, as permitted by DCAF, routinely changes the "placements" of the children class members, including the representative Plaintiffs, routinely allowing far more than the targeted two placement changes during the child's stay in HKI's and DCAF's custody, despite knowing such placement changes further compound the trauma to each child and includes the likelihood of severe reactive attachment problems.

e. Each "placement" change involves a total disruption of the child's life, from the street address to the persons with whom the child is staying, to the neighborhood, the school and even the child's bed and pillows;

f. As operated by HKI and supervised by DCAF, class members whose parental rights have been terminated like the representative Plaintiffs, are not provided with appropriate, mandatory, proactive, best practice,

targeted, child-specific adoptive recruitment efforts; instead, HKI and DCAF ignore the specific needs of the children and utilize non-best practice methods such as adoption picnics;

g. HKI expressly chooses not to provide children with mental disabilities and instabilities with available targeted recruitment service.

h. Claiming a shortage of good therapeutic foster home, HKI also routinely puts mentally unstable foster youth in placements outside the county, then uses the "out of county" status to deny those youngsters access to otherwise available adoption services.

i. Although HKI and DCAF contractually agreed HKI must meet 100% of the adoption goal set each year<sup>3</sup> it has not done that, missing by more some 5%;

j. To compound their neglect of children's need for a good family, HKI and DCAF accept and act upon dangerous unsupported premises and simply do not look for an adoptive family for a child who is labeled by some worker as "not ready" or "not stable" enough. [Requiring

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<sup>3</sup> The goal set does not equal the number of children available for and in need of adoption, but less than a majority, in other words, the percent of adoption goal is much less than the children in need of adoption.

or expecting a foster child without a good stable family to somehow "earn" a good permanent family is a shameful practice that was exposed, debunked and rejected during the 1990-1995 Children A through F class action; it is also contrary to law and pertinent best practices];

k. Children class members, including the representative Plaintiffs, need good, loving families to help them stabilize and develop properly; it is unconscionable and contrary to best practices to try to make the child "earn" a family, particularly since prompt placement with a good permanent family is exactly what the child needs;

l. Both HKI and DCAF also heavily and improperly rely on the use of dangerous mind altering psychotropic medications to control the hostage children rather than helping them; although it has been repeatedly admitted that the data is not complete, at least 30% of the class members including the representative Plaintiffs are being subjected to these drugs; and

m. Section 39.407, Florida Statutes mandates the procedure that must be complied with before children whose rights are terminated can be subjected to psychotropic medications. Notwithstanding, HKI and DCAF

are routinely violating the statute and are unlawfully permitting the drugging of foster children without complying with the mandatory statute. Included in the violations are the failures and/or refusals of HKI and DCAF to provide the, required complete medical records and history to health care providers asked to prescribe the chemical restraint medications.

Typicality of Plaintiffs

42. Plaintiff "Karina Smith" is a representative member of the class. Having been held in the system for more than 5 years, in numerous placements, including locked psychiatric placements, on inappropriate, excessive, unconsented harmful psychiatric medications, she is well aware of how the system treats the children hostages. She is currently in South Florida, in a locked psychiatric hospital, on unconsented to medications, deteriorating. There is no proactive search going on for adoptive parents, despite the laws requiring the HKI and DCAF Defendants to provide a permanent family.

43. Plaintiff "Elijah Moses" is a representative member of the class. He has been in the system for more than two years, including some locked placements, and has been placed improperly on chemical restraints. He is currently in an out of county placement on behavior control; representatives of



Defendants HKI and DCAF have told his attorney ad litem in writing they will not provide child specific recruitment services there, even though they put them there.

44. As Plaintiffs are two of the very few children with a dependency court attorney ad litem and also have a guardian ad litem, Plaintiffs are capable to serve as class representatives.

45. To assist in this litigation, the representative Plaintiffs have retained the services of competent trial counsel, including Board Certified Civil Trial attorney Karen Gievers and Board Certified Appellate attorney Roy Wasson. Attorneys Gievers and Wasson are both knowledgeable about the dependency system statewide and in Hillsborough County.

46. Florida and federal law recognize that foster care should be a short, temporary stay; children such as Plaintiffs should be in a good permanent family setting within 18 months of coming into foster care.

47. Excessive lengths of stay in foster care are harmful to the well being and development of children such as Plaintiffs and the other children similarly situated.

#### Background Facts

48. Defendant DCAF has the overarching obligation under state and federal law to see that the Florida foster care

system is operated in accordance with state and federal law requirements to operate in the Hillsborough system in a manner consistent with competent professional social work standards. See e.g., Chapter 39 and Section 409.165, Florida Statutes.

49. Since 2002, by virtue of its contractual agreements with DCAF, Defendant Hillsborough Kids has had a contractual responsibility to operate and handle the providing of front line foster care services, case management, foster and group placements and making sure the children are safe and not held in a manner contrary to law.

50. Florida law mandates that foster care be only a temporary stay for a child.

51. In 1997, Congress adopted the Adoption and Safe Families Act, which directs that children be moved from foster care to permanency as expeditiously as possible, and sets an 18 month time frame as the maximum length of stay.

52. At all times material, DCAF and HKI officials had actual knowledge that the more times a child is moved from place to place, the greater the likelihood of permanent physical, psychological and mental harm to the child; the controlling standards specify that no child in care should be moved more than two times.

53. At all times material, DCAF and HKI officials had

actual knowledge that the longer a child was kept in the Florida foster system, the greater the likelihood of harm and injury to the child, including but not limited to the occurrence and exacerbation of reactive attachment problems and developmental delays.

54. At all times material, the DCAF and HKI officials had actual knowledge that the longer they took providing children with a good, stable permanent home, the greater the likelihood that children would be harmed and injured, and the greater the likelihood the injuries would be longer lasting and more severe.

55. At all times material, the HKI and DCAF Defendants knew that their obligations to provide children with permanency included the obligation to either promptly reunify him with relatives if that could be done safely or, if not, to locate an appropriate adoptive family using child-specific targeted recruitment techniques consistent with the applicable mandatory best practices.

56. Failure to provide these services due to actual and perceived mental disabilities, impairments and instabilities violates the Americans with Disabilities Act.

57. The state and federal Early Periodic Screening Diagnosis and Treatment Acts [EPSDT] require initial and

periodic screening and diagnosis of physical and mental health problems of foster children such as the Plaintiffs, and further require that treatment needs identified be promptly and properly provided for.

58. Failure to properly provide for these needs violates state and federal law, and also constitutes medical neglect prohibited by Florida's child abuse and neglect statutes.

59. Giving children chemical restraint medications without the requisite court orders constitutes a failure to comply with Florida's informed consent laws relating to the administration of psychiatric medication, and is child abuse, as well as battery.

"Karina Smith" and Elijah Moses"

60. Minor Plaintiff "Karina Smith" [Karina] was born on October 20, 1994; she is now 14 years old, and has been in foster care since January 2004, when she was 9 years old.

61. Minor Plaintiff "Elijah Moses" [Elijah] was born on May 13, 1998; he has been essentially in foster care since birth. [Although he was nominally in an "adoptive" home, the foster adoptive mother was not capable of properly nurturing and parenting Elijah, and neglected him and abused him while in that "adoptive" placement between birth and early 2007.

62. For several years before 2004, minor Plaintiff

Karina was provided services while under supervision of the Department of Children and Families and its lead agency Hillsborough Kids, Inc. and its chief operations executive Jeff Rainey.

63. The parental rights of Plaintiff Karina's parents were terminated early on, and by 2005, foster system officials knew that minor Plaintiff Karina was available for adoption.

64. Similarly, DCAF finally removed Elijah from the abusive foster "adoptive" mother around July 2007 and any parental rights she had were terminated in September 2007. The foster system officials knew by July 2007 that minor Plaintiff Elijah was available for adoption.

65. In 2005, Plaintiff Karina's health care providers determined that keeping her in a locked psychiatric placement and on psychotropic medications was not helping her and was detrimental to her well being.

66. Karina's providers recommended that Plaintiff not be treated further in this manner because it was so detrimental to her and suggested other, less restrictive alternatives.

67. Despite the EPSDT statutes and the 2005 recommendations for other treatments than locked psychiatric placements and administration of psychotropic medications, and the federal and state mandates for the least restrictive

placements, Defendants have ignored the Plaintiffs' treatment needs.

68. Notwithstanding the 2005 recommendations and state and federal law to the contrary, the Defendants have kept Plaintiff Karina chemically restrained and in excessively restrictive placements, to her detriment. Because of the chemical abuse, and neglect of her needs, Karina has been and is continuing to deteriorate.

69. Throughout the time that minor Plaintiff Karina has been kept in the foster care system, the Defendants have arranged for the minor Plaintiff to be held in locked psychiatric placements including but not limited to PEMHS, Manatee Palms, Manatee Glen, Tampa Bay Academy and, most recently an out of county facility in Tequesta, by the name of Sandy Pines.

70. Throughout Karina's stay in the foster system, Defendants have subjected her to almost continuous administration of dangerous, mind-altering psychiatric medications [many of which are not to be given at all to those under the age of 18, such as Plaintiff Karina].

71. On more than one occasion during and since 2005, the therapist most familiar with Plaintiff Karina recommended that the minor Plaintiff not be held in a locked psychiatric

placement [known as a SIPP - statewide inpatient psychiatric placement], but instead be placed in an appropriate therapeutic foster home.

72. Plaintiff Elijah has also been kept improperly in more restrictive placements than necessary, and has also been improperly chemically restrained, illegally and without appropriate consents.

73. Elijah was taken from an abusive adoptive home, and put into a locked psychiatric placement.

74. Since his reentry into foster care more than two years ago, he has been medicated with psychiatric medications, solely for behavior control reasons for the convenience of his caregivers.

75. Contrary to law and HKI's contracts there has been no proactive targeted child specific recruitment performed for either minor Plaintiff or others similarly situated for at least the past two years.

76. Plaintiff Elijah had been in foster care as an infant and was placed with an adoptive mother who adopted four other children as well.

77. The adoptive mother abused Elijah for years, before DCAF's child protective investigators finally removed him from the house and returned him to foster care.

78. Upon Elijah's return to care from the abusive foster "adoptive" placement, Defendants HKI and DCAF put 7 year old Elijah into the locked psychiatric facility known as Tampa Bay Academy, a place where he was further abused, improperly subjected to dangerous psychiatric medication, and where his developmental needs and rights were not met.

79. Many of the dangerous psychotropic medications were administered to Plaintiffs without the requisite informed consent or court orders being obtained, contrary to state and federal law, and the Plaintiffs' constitutionally protected due process rights.

80. At all times material, Defendant HKI has acted as the entity in charge of the overall case management and care of the Plaintiffs, and is the entity responsible for making sure that children such as the Plaintiffs are moved to permanency within the parameters anticipated by state and federal law.

81. At all times material, Defendant First Health has had control over mental health services being provided to the minor Plaintiffs.

82. Defendant Health has also agreed to and has approved payment by AHCA for the strikingly large amount of behavior control psychiatric medications and restrictive placements to



which the minor Plaintiffs have been subjected.

83. Both Defendants Health and AHCA contribute to the unlawful drugging of children in the foster system by continuing to reimburse prescribers of psychiatric medications despite the lack of the mandated court order needed as legal consent.

84. After holding Elijah at Tampa Bay Academy for more than 12 months with the assistance of Defendants AHCA and Health, HKI transferred Elijah to the other side of the state to a group home in Brevard County.

85. The HKI Defendants have improperly continued to refuse to provide proactive recruitment services for Elijah, initially because of reported mental disabilities and instabilities and now, also improperly, because Elijah is "out of county" and they will not provide adoption recruitment services until they bring him back to Hillsborough.

86. Now 11 years old, Elijah has already been Baker Acted in Brevard County because of concerns he was becoming suicidal.

87. At all times material, Defendants AHCA and Health track and permit, by approving and paying for, the psychotropic behavior control chemical restraint medications to which Plaintiffs and other youngsters in Hillsborough

foster care are subjected.

88. At all times material, AHCA and Health also track and facilitate the warehousing of children like the Plaintiffs and others similarly situated in locked mental health facilities, for the convenience of system operators.

89. It is the pattern and practice of HKI and its officers Rainey and Hall that youngsters such as the Plaintiffs with mental health needs are not provided proactive targeted recruitment services for adoptive parents, and are therefore denied good permanent families, contrary to law.

90. Without interference from the DCAF Defendants, Defendants Rainey and Hall have chosen to allow HKI to fail to provide enough therapeutic and other foster beds in Hillsborough County to meet the needs of the children in the foster care system who need a therapeutic placement in the community; instead, they have approved the practice of holding children such as Plaintiff in locked psychiatric facilities in Hillsborough, Brevard and Martin counties and elsewhere.

91. It is, and for years has been, the policy and practice of the HKI Defendants without interference by the DCAF Defendants not to provide youngsters with mental disabilities and instabilities with access to proactive child-specific targeted adoption recruitment services.

92. It is, and for years has been, the policy and practice of the HKI Defendants without interference by the DCAF Defendants to move youngsters into therapeutic group homes and facilities in other counties, triggering another HKI practice and policy of not providing proactive adoptive services to "out of county" children.

93. It is, and for years has been, the policy and practice of HKI to not provide proactive, child-specific targeted adoption recruitment services to children in its custody who have been put in out of county placements.

94. Each of these policies and practices violates constitutionally protected rights of children such as Plaintiff and each violates the American with Disabilities Act [ADA] and the ESPDT Acts, among other statutes.

95. Plaintiffs have retained counsel and are obligated to pay reasonable attorney's fees.

COUNT I - CLAIM FOR INJUNCTIVE RELIEF AGAINST RAINEY,  
HALL, HKI, AHCA, BENSON, FIRST HEALTH, DCAF, SHELDON AND COX  
(Individual and Class Claims)

On behalf of themselves and all others similarly situated, Plaintiffs reallege all prior paragraphs and further allege:

96. Plaintiffs and all class members have disabilities and are handicapped within the parameters of the Americans

with Disabilities Act.

97. It is the obligation of all of the Defendants to respect the rights of children while they are in the foster care system.

98. Compounding the harm from the rampant system and drugging of the foster children and the warehousing of foster children in excessively restrictive psychiatric facilities the HKI and DCAF Defendants are intentionally not proactively recruiting appropriate families, by their policies, procedures, practice and custom of refusing to proactively look for parents for mentally disabled and unstable youngsters or for those "out of county" such as the Plaintiffs.

99. All of the Defendants know that the side effects of the chemical restraint medications to which the Plaintiffs and others similarly situated are subjected are dangerous, and cause suicidal tendencies, brain tumors, diabetes, obesity, as well as increased anxiety, aggression, nervousness and numerous other side effects detrimental to children.

100. The Plaintiffs and other class members have a constitutionally protected due process right not to be locked up or subjected to mind-altering medications in a manner contrary to law.

101. Notwithstanding the pertinent statutes and the known

dangers and detrimental effects and health risks, all Defendants collaborate in using dangerous chemical restraints and excessively restrictive placements on foster children, allowing the children to be exploited financially as a result.

WHEREFORE Plaintiffs request entry of an order to:

a. Immediately transfer the minor Plaintiff Karina to an appropriate therapeutic foster home in Hillsborough in which she will be the only youngster;

b. Immediately transfer the minor Plaintiff Elijah to a safe, proper, Tampa area foster home;

c. Prohibiting the further excessive, unlawful administration of mind altering psychotropic medications to Plaintiffs and class members;

d. Prohibiting Health and AHCA from further approval of any payment for excessive unlawfully administered psychotropic medications for Plaintiffs and class members;

e. Compelling Defendants Rainey, Hall, HKI, DCAF, Sheldon and Cox to immediately change their policies, procedures, customs and practices so that even youngsters with mental health issues and who are out of county, are provided proactive child specific adoption recruitment services as envisioned by state and federal law; and

f. Order the Defendants to reimburse Plaintiffs' attorneys' fees and costs.

**COUNT II - CLAIMS AGAINST DCAF AND HKI FOR DECLARATORY  
RELIEF AND TO COMPEL PERFORMANCE OF THE CONTRACT**  
(Individual and Class Claims)

Plaintiffs reallege paragraphs 1 through 95 and further allege:

102. Since 2002, HKI and DCAF have had a contractual relationship, whereby DCAF contracted with private corporate entity HKI to properly operate the foster system. The current contract is hereby incorporated herein by reference.

103. Each of the Plaintiffs and all other foster youngsters similarly situated are third party beneficiaries of the contract, and each should be found entitled to have the contract obligations relating to their permanency, safety and right to be safe and lawfully treated performed properly. [The contract provision attempting to deny the youngsters who are the very "raison d'etre" for the contract is unconscionable and should be found to be shameful and contrary to Florida public policy].

104. The Defendant DCAF is obligated by law to make sure that the contract obligations of HKI for Hillsborough foster children are being performed properly.

105. Despite being aware of numerous violations during

the past several years, DCAF has continued to leave Hillsborough foster children in the dysfunctional, abusive and neglectful system operated by HKI, to their detriment and further harm.

106. For the last several years, HKI has chosen to ignore its obligations to each of the foster youngsters for which it agreed to be responsible.

107. Specifically:

a. HKI has not provided children in the Plaintiff class with good permanent families within 18 months of their coming into care, as required;

b. HKI has not provided a sufficient number of good, safe foster and therapeutic homes for the foster youngsters for which it is responsible;

c. HKI has adopted the practice of working with Defendants DCAF, AHCA and Health to warehouse children in locked psychiatric placements, constantly subject to excessive mind-altering medications, and to further allow such medications routinely outside the locked facilities, ignoring the legal prohibitions of such actions;

d. HKI has improperly denied access to child-specific proactive adoption recruitment services, violating the rights of children under the Americans with

Disabilities Act and the children's constitutional rights;

e. HKI has routinely allowed foster children for whom it is responsible to be illegally drugged primarily for behavior control purposes and for the convenience of the children's foster parents and facilities staff;

f. Despite being advised of the impropriety of its actions, HKI has continued to put its interests ahead of those of the children, all to the detriment of the children and to the financial benefit of HKI and those affiliated with the system; and

g. Neither the HKI Defendants nor Health, nor the AHCA Defendants are a party to any dependency case, and they are not subject to the jurisdiction of the dependency court.

108. Although DCAF is a nominal party in dependency court proceedings, DCAF's contract is not properly before the dependency court in any of those cases, which are limited by law to the issues and matters assigned in Chapter 39.

109. There cannot be rights without remedies.

110. The Plaintiffs and class members are trapped in what is supposed to be the "temporary" custody of DCAF and HKI, entitled to protection, proper nurture and development, and



good permanent families, without being subjected to abuse and violations of their rights.

111. The rights of the Plaintiffs need the protection of this Court, to prohibit further drugging for convenience and further warehousing, and to compel respect for the law and the rights of these already victimized children.

WHEREFORE Plaintiffs request entry of an order:

a. Declaring that the children whose lives are controlled by and subjected to the contract be found to have standing to seek performance of the contract;

b. Compelling HKI and DCAF's proper performance of its contract obligations to each of the Plaintiffs and all foster children similarly situated;

c. Compelling HKI and DCAF to comply with the rule of law relating to the children, their safety and rights, including but not limited to:

1. State and federal EPSDT statutes;
2. The ADA;
3. State and federal requirements prohibiting use of any but the least restrictive placements and treatments;
4. Statutes prohibiting child abuse and drugging of the Plaintiffs and class members

contrary to law; and

5. Providing permanency, with good adoptive families where safe return to their natural families is not feasible.

d. Compelling DCAF to actively monitor and enforce HKI's contract performance as to the Plaintiffs and class members.

e. Compelling DCAF to find other placements for the children if HKI cannot or will not immediately, properly and lawfully provide for the Plaintiffs and others similarly situated.

**COUNT III - CLAIMS OF KARINA AGAINST  
DCAF AND HKI FOR BREACH OF CONTRACT**

Plaintiff Karina realleges paragraphs 1 through 25, 47 through 60, 62 through 71, 75, 79 through 80, and 87 through 95, and further alleges:

112. At all times material, Plaintiff Karina was and is an intended third party beneficiary of the contract between DCAF and HKI.

113. At all times material, Plaintiff Karina was and is entitled to protection of all her legal rights, and was entitled to care while in foster care in a manner with the Constitutions of Florida and the United States, the applicable

statutes and administrative codes and policies relevant to foster children, and was and is entitled to all services HKI agreed, in its contract with DCAF to provide any child.

114. HKI and DCAF have breached their contractual obligations to Plaintiff Karina in that:

- a. They have not provided her with permanency;
- b. They have been and continue to subject her to dangerous mind-altering psychiatric medications without consent, contrary to law and despite knowing that the use of the dangerous drugs was harmful to her;
- c. They have unlawfully kept her locked up in the most restrictive placements despite being aware of the detrimental effect on her and of her need for a therapeutic foster home;
- d. They have discriminated against her, illegally denying her access to child specific adoption recruitment services;
- e. They have failed to follow appropriate recommendations for Plaintiff under the state and federal EPSDT Acts; and
- f. They have allowed her to be exploited by entities and persons in the system, to mistreat Plaintiff's needs while being paid huge amounts of money by AHCA, approved

by Defendant Health.

115. As a result, Plaintiff Karina suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of her ability to earn money and aggravation of a previously existing condition. Her losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

**COUNT IV - CLAIMS OF ELIJAH AGAINST  
DCAF AND HKI FOR BREACH OF CONTRACT**

Plaintiff Elijah realleges paragraphs 1 through 25, 47 through 59, 61, 67, and 72 through 95, and further alleges:

116. At all times material, Plaintiff Elijah was and is an intended third party beneficiary of the contract between DCAF and HKI.

117. At all times material, Plaintiff Elijah was and is entitled to protection of all his legal rights, and was entitled to care while in foster care in a manner with the Constitutions of Florida and the United States, the applicable

statutes and administrative codes and policies relevant to foster children, and was and is entitled to all services HKI agreed, in its contract with DCAF to provide any child.

118. HKI and DCAF have breached their contractual obligations to Plaintiff Elijah in that:

- a. They have not provided him with permanency;
- b. They have been and continue to subject him to dangerous mind-altering psychiatric medications without consent, contrary to law and despite knowing that the use of the dangerous drugs was harmful to him;
- c. They have unlawfully kept him locked up in the most restrictive placements despite being aware of the detrimental effect on him and of his need for a therapeutic foster home;
- d. They have discriminated against him, illegally denying him access to child specific adoption recruitment services;
- e. They have failed to follow appropriate recommendations for Plaintiff under the state and federal EPSDT Acts; and
- f. They have allowed him to be exploited by entities and persons in the system, to mistreat Plaintiff's needs while being paid huge amounts of money by AHCA, approved

by Defendant Health.

119. As a result, Plaintiff Elijah suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of his ability to earn money and aggravation of a previously existing condition. His losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

**COUNT V - CLAIMS OF KARINA SMITH AGAINST THE HKI DEFENDANTS  
FOR COMMON LAW NEGLIGENT SOCIAL WORK AND CASE MANAGEMENT**

Plaintiff Karina Smith realleges paragraphs 1 through 25, 47 through 60, 62 through 71, 75, 79 through 80 and 87 through 95, and further alleges:

120. At all times pertinent, the HKI Defendants had the duty to use reasonable care in providing the social work necessary for the safety and well-being of the minor Plaintiff; said social work is required to meet acceptable standards in the community and best practices recognized by the HKI Defendants and expected of foster care workers.

121. The aforesaid conduct of the HKI Defendants as set forth above constitutes the failure to perform and provide reasonably competent social and case work.

122. The negligent social and case work provided by the HKI Defendants is below appropriate acceptable social work standards to be provided by front line caseworkers whose jobs include the provision of social work to children like Plaintiff.

123. The social work provided to Plaintiff by the HKI Defendants does not meet and is not consistent with the applicable best practices to which Plaintiff was entitled.

124. The HKI caseworkers responsible for providing social and case work for Plaintiff Karina were not acting as policy makers and did not act as policy makers in their handling of Plaintiff's case and their performing social work and case management responsibilities for Plaintiff.

125. Said conduct of the HKI Defendants caused and contributed to the injuries sustained by Plaintiff Karina as set forth in more detail below.

126. As a result, Plaintiff Karina suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with

education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of her ability to earn money and aggravation of a previously existing condition. Her losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

**COUNT VI - CLAIMS OF ELIJAH MOSES AGAINST THE HKI DEFENDANTS  
FOR COMMON LAW NEGLIGENT SOCIAL WORK AND CASE MANAGEMENT**

Plaintiff Elijah Moses realleges paragraphs 1 through 25, 47 through 59, 61, 67 and 72 through 95, and further alleges:

127. At all times pertinent, the HKI Defendants had the duty to use reasonable care in providing the social work necessary for the safety and well-being of the minor Plaintiff; said social work is required to meet acceptable standards in the community and best practices recognized by HKI and expected of foster care workers.

128. The HKI Defendant's aforesaid conduct as set forth above constitutes the failure to perform and provide reasonably competent social and case work.

129. The negligent social and case work provided by the HKI Defendants is below the appropriate acceptable social work



standards to be provided by front line caseworkers whose jobs include the provision of social work to children like Plaintiff.

130. The social work provided to Plaintiff by the HKI Defendants does not meet and is not consistent with the applicable best practices to which Plaintiff was entitled.

131. The HKI caseworkers responsible for providing social and case work for Plaintiff were not acting as policy makers and did not act as policy makers in their handling of Plaintiff's case and their performing social work and case management responsibilities for Plaintiff.

132. Said conduct caused and contributed to the injuries sustained by Plaintiff as set forth in more detail below.

133. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of his ability to earn money and aggravation of a previously existing condition. His losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care

and assistance.

**COUNT VII - YAMUNI CLAIMS OF KARINA AGAINST DEFENDANT  
DCAF FOR NEGLIGENT INVESTIGATION AND FAILURE TO PROTECT**

\_\_\_\_\_ Plaintiff Karina realleges paragraphs 1 through 25, 47 through 60, 62 through 71, 75, 79 through 80, and 87 through 95, and further alleges:

134. At all times material, DCAF had a duty to properly respond to abuse calls to the Abuse Hotline, to conduct proper child safety assessments and take the required actions to keep Plaintiff Karina safe and reduce the foreseeable risk of further harm.

135. On at least three occasions before Plaintiff was taken into DCAF custody in 2004, DCAF was notified that Karina was being subjected to physical and sexual abuse.

\_\_\_\_\_136. DCAF had a duty to conduct a competent investigation, and conduct a proper child safety assessment, and take appropriate action for prevention of further harm to the Plaintiff.

137. For the past several months, DCAF has done nothing to remove Katrina from Sandy Pines, a locked psychiatric hospital where she has continued to be subjected to psychiatric medications, without court orders or legal consent; indeed, the dependency court months ago ordered that

she be set free and put in a therapeutic foster home, to no avail.

138. Despite knowledge of the law, its mandatory, non-discretionary duty to the Plaintiff and its knowledge of the risk to the Plaintiff from her parents, Defendant DCAF breached its duty to the Plaintiff, and left the Plaintiff in harm's way to be further abused.

139. After Defendant DCAF was directly notified of the abuses of Plaintiff Karina in the foster system, DCAF ignored its duty to keep Plaintiff safe, and has continued to allow her to be abused in the system.

140. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, mental disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of her ability to earn money and aggravation of a previously existing condition. Her losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

**COUNT VIII - YAMUNI CLAIMS OF ELIJAH AGAINST DEFENDANT  
DCAF FOR NEGLIGENT INVESTIGATION AND FAILURE TO PROTECT**

\_\_\_\_\_ Plaintiff Elijah realleges paragraphs 1 through 25, 47 through 59, 61, 67 and 72 through 95, and further alleges:

141. At all times material, DCAF had a duty to keep Plaintiff Elijah safe.

142. On at least one occasion before Plaintiff was taken into DCAF custody in 1998, DCAF was notified that Elijah was being subjected to abuse and neglect and was being held in a locked room for excessive periods of time.

\_\_\_\_\_143. DCAF had a duty to conduct a competent investigation, and conduct a proper child safety assessment, and take appropriate action for prevention of further harm to the Plaintiff.

144. Despite knowledge of the law its mandatory, non-discretionary duty to the Plaintiff and its knowledge of the risk to the Plaintiff from his foster "adoptive" parent, Defendant DCAF breached its duties to Plaintiff Elijah and left the Plaintiff in harm's way to be further abused.

145. After Defendant DCAF was directly notified of the abuses of Plaintiff Eliljah in the foster system, DCAF ignored its duty to keep Plaintiff safe, and has continued to allow him to be abused in the system.

146. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, mental disability, adverse reaction to the psychiatric medications, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of his ability to earn money and aggravation of a previously existing condition. His losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

**COUNT IX - KARINA'S CLAIMS AGAINST DCAF, HKI,  
FIRST HEALTH AND AHCA FOR STATUTORY VIOLATIONS**

Plaintiff Karina realleges paragraphs 1 through 25, 47 through 60, 62 through 71, 75, 79 through 80 and 87 through 95, and further alleges:

147. At all times material, Defendants DCAF and HKI had a duty under Chapter 39 and Section 409.145, Florida Statutes and the state and federal EPSDT Act, among others, to properly conduct the foster care program, and to protect foster children such as Plaintiff.

148. At all times material, Defendants Health and AHCA

had a duty to Plaintiff to see that the Medicaid system operated properly and did not operate in such a way so as to provide an incentive for Medicaid providers to abuse Plaintiff by keeping her locked up and excessively, illegally drugged.

149. Among the actions necessary for Defendants DCAF, HKI, Health and AHCA to discharge their statutory duties to Plaintiff is the action required to see that Plaintiff's needs were not neglected to her detriment, that she was not subjected to battery through unlawful administration of psychotropic medications, and that Plaintiff's legal rights were protected.

150. Also, among the actions necessary for Defendants to comply with their statutory obligations is its obligation to promptly identify the Plaintiff's medical and mental health needs, and to see that identified needs are promptly treated, consistent with the applicable Florida and federal EPSDT Statutes and Chapter 39, Florida Statutes.

151. Defendants also repeatedly violated its obligations by repeatedly ignoring Plaintiff's identified needs for a family, counseling and therapy to help address the needs of and injuries to Plaintiff caused by the trauma of each disruptive move; the Defendants' collaborative efforts have resulted in numerous batteries and abuses being inflicted on

Plaintiff as they continue to deny her a good permanent family, and keep her locked up for more torture and abuse.

152. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of her ability to earn money and aggravation of a previously existing condition. Her losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

**COUNT X - ELIJAH'S CLAIMS AGAINST DCAF, HKI,  
FIRST HEALTH AND AHCA FOR STATUTORY VIOLATIONS**

Plaintiff Elijah realleges paragraphs 1 through 25, 47 through 59, 61, 67 and 72 through 95, and further alleges:

153. At all times material, Defendants DCAF and HKI had a duty under Chapter 39 and Section 409.145, Florida Statutes and the state and federal EPSDT Act, among others, to properly conduct the foster care program, and to protect foster children such as Plaintiff.

154. At all times material, Defendants Health and AHCA

had a duty to Plaintiff to see that the Medicaid system operated properly and did not operate in such a way to provide an incentive for Medicaid providers to abuse Plaintiff by keeping him locked up and excessively, illegally drugged.

155. Among the actions necessary for Defendants DCAF, HKI, Health and AHCA to discharge their statutory duties to Plaintiff is the action required to see that Plaintiff's needs were not neglected to his detriment, that he was not subjected to battery through unlawful administration of psychotropic medications, and that Plaintiff's legal rights were protected.

156. Also, among the actions necessary for Defendants to comply with their statutory obligations is its obligation to promptly identify the Plaintiff's medical and mental health needs, and to see that identified needs are promptly treated, consistent with the applicable Florida and federal EPSDT Statutes.

157. Defendants also violated their obligations by ignoring Plaintiff's identified needs for a family, counseling and therapy to help address the needs of and injuries to Plaintiff caused by the trauma of each disruptive move; the Defendants' collaborative efforts have resulted in numerous batteries and abuses being inflicted on Plaintiff as they continue to deny him a good permanent family, and keep him



locked up for more torture and abuse.

158. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of his ability to earn money and aggravation of a previously existing condition. His losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

**COUNT XI - KARINA'S CLAIMS AGAINST DCAF AND  
HKI FOR NEGLIGENT OPERATION OF FOSTER CARE SYSTEM**

Plaintiff Karina realleges paragraphs 1 through 25, 47 through 60, 62 through 71, 75, 79 through 80 and 87 through 95, and further alleges:

159. At all times material, DCAF and HKI had a duty to provide appropriate social work and case management to Karina.

160. At all times material, DCAF and HKI failed to provide competent, timely and proper case management benefitting Karina, instead focused on creating and filing paperwork and having meetings and staffings.

161. DCAF and HKI routinely had staffings at which Karina was discussed, without Karina or her court appointed dependency court advocates being present, and although more paperwork was created, but the necessary followup actions were either not taken or were not done timely or properly.

162. At all times material to this action, Defendant DCAF and HKI's agents, including their employees, owed a duty to Karina to provide her with:

- a. a good, stable, permanent family;
- b. a safe, nurturing environment;
- c. protection;
- d. 24-hour supervision;
- e. food;
- f. clothing;
- g. shelter;
- h. freedom from excessive government intrusion into her life;
- i. a normal childhood; and
- j. protection of her legal and constitutionally protected rights.

163. From Karina's admission to the foster care system to present, HKI employees and agents negligently failed to keep Karina safe and failed to provide her with a good permanent

family and stability, and failed to nurture her, thereby breaching their obligations to Karina and the duties identified above.

164. For years, DCAF and HKI have violated Plaintiff's rights by repetitive acts of disregard and neglect of Karina, her needs and her well-being.

165. At all times material to this action, DCAF and HKI employees and agents negligently failed to provide reasonable care.

166. At all times material to this action, Defendant DCAF and HKI, negligently failed to provide reasonable security and safety for Karina.

167. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of her ability to earn money and aggravation of a previously existing condition. Her losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

**COUNT XII - ELIJAH'S CLAIMS AGAINST DCAF AND  
HKI FOR NEGLIGENT OPERATION OF FOSTER CARE SYSTEM**

Plaintiff Elijah realleges paragraphs 1 through 25, 47 through 59, 61, 67 and 72 through 95, and further alleges:

168. At all times material, DCAF and HKI had a duty to provide appropriate social work and case management to Elijah.

169. At all times material, DCAF and HKI failed to provide competent, timely and proper case management benefitting Elijah, instead focused on creating and filing paperwork and having meetings and staffings.

170. DCAF and HKI routinely had staffings at which Elijah was discussed, without Elijah or his court appointed dependency court advocate being present, and more paperwork was created, but the necessary followup actions were either not taken or were not done timely or properly.

171. At all times material to this action, Defendant DCAF and HKI's agents, including their employees, owed a duty to Elijah to provide him with:

- a. a good, stable, permanent family;
- b. a safe, nurturing environment;
- c. protection;
- d. 24-hour supervision;
- e. food;

- f. clothing;
- g. shelter;
- h. freedom from excessive government intrusion into his life;
- i. a normal childhood; and
- j. protection of his legal and constitutionally protected rights.

172. From Elijah's admission to the foster care system to present, HKI employees and agents negligently failed to keep Elijah safe and failed to provide him with a good permanent family and stability, breaching their obligation to Elijah.

173. For years, DCAF and HKI have violated Plaintiff's rights by repetitive acts of disregard and neglect of Elijah, his needs and his well-being.

174. At all times material to this action, DCAF and HKI employees and agents negligently failed to provide reasonable care.

175. At all times material to this action, Defendant DCAF and HKI, negligently failed to provide reasonable security and safety for Elijah.

176. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss

of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of his ability to earn money and aggravation of a previously existing condition. His losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

**COUNT XIII - KARINA'S CLAIMS AGAINST HKI FOR THE TORT OF OUTRAGE AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

Plaintiff Karina realleges paragraphs 1 through 25, 47 through 60, 62 through 71, 75, 79 through 80 and 87 through 95, and further alleges:

177. Through its conduct, DCAF and HKI have caused Plaintiff to be subjected to emotional distress and other psychological and mental injury by their handling of her case and their abuse of her and violation of her rights.

178. The DCAF and HKI conduct pertinent includes:

a. DCAF and HKI's failure to provide Plaintiff with a good, stable, loving family.

b. DCAF and HKI's reliance on mind-altering psychiatric drugs for the purpose of chemically restraining Plaintiff, not for the purpose of

treating any underlying medical condition.

c. DCAF and HKI's multiple movements of Plaintiff despite DCAF and HKI's knowledge that such moves were likely to be harmful to Plaintiff, and likely to cause and/or exacerbate Plaintiff's reactive attachment problems.

d. DCAF and HKI's denial of the appropriate least restrictive placements.

e. DCAF and HKI's subjecting Plaintiff to dangerous psychiatric medications neither needed nor appropriate for any properly diagnosed medical condition.

f. DCAF and HKI's failure to provide prompt, proper, medication-free evaluation of and treatment for Plaintiff's actual conditions and problems.

g. DCAF and HKI's failure to conduct an appropriate child-specific recruitment for a good family.

h. DCAF and HKI negligently investigating allegations regarding Plaintiff, and inaccurately documenting the investigation, then relying on the inaccurate documents to keep Plaintiff from contact with her siblings.

i. DCAF and HKI's handling of Plaintiff's case was restricted and impeded, Plaintiff's education, causing Plaintiff further anguish and harm.

179. The Defendants' actions and inactions in holding Karina captive, in denying Karina a good permanent family, in isolating her from friends, in keeping her locked up for years because of her reactions to the inappropriate warned-against mind-altering, anger and irritability-increasing medications they caused to be administered, ignoring their obligation to nurture her or raise her properly, clearly constitute the outrageous inflicting of harm on Karina.

180. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of her ability to earn money and aggravation of a previously existing condition. Her losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.



**COUNT XIV - ELIJAH'S CLAIMS**  
**AGAINST HKI FOR THE TORT OF OUTRAGE**

Plaintiff Elijah realleges paragraphs 1 through 25, 47 through 59, 61, 67 and 72 through 95, and further alleges:

181. Through its conduct, DCAF and HKI have caused Plaintiff to be subjected to emotional distress and other psychological and mental injury by their handling of his case and their abuse of him and violation of his rights.

182. The DCAF and HKI conduct pertinent includes:

a. DCAF and HKI's failure to provide Plaintiff with a good, stable, loving family.

b. DCAF and HKI's reliance on mind-altering psychiatric drugs for the purpose of chemically restraining Plaintiff, not for the purpose of treating any underlying medical condition.

c. DCAF and HKI's multiple movements of Plaintiff despite DCAF and HKI's knowledge that such moves were likely to be harmful to Plaintiff, and likely to cause and/or exacerbate Plaintiff's reactive attachment problems.

d. DCAF and HKI's denial of the appropriate least restrictive placements.

e. DCAF and HKI's subjecting Plaintiff to

dangerous psychiatric medications neither needed nor appropriate for any properly diagnosed medical condition.

f. DCAF and HKI's failure to provide prompt, proper, medication-free evaluation of and treatment for Plaintiff's actual conditions and problems.

g. DCAF and HKI's failure to conduct an appropriate child-specific recruitment for a good family.

h. DCAF and HKI negligently investigating allegations regarding Plaintiff, and inaccurately documenting the investigation, then leaving Plaintiff in harm's way to be further abused by his adoptive family before belatedly acting to remove him from the caged room the adoptive mother routinely kept him.

i. DCAF and HKI's handling of Plaintiff's case was restricted and impeded Plaintiff's education, causing Plaintiff further anguish and harm.

183. The Defendants' actions and inactions in holding Elijah captive, in denying Elijah a good permanent family, in isolating him from friends, in keeping him locked up for years because of his reactions to the inappropriate warned-against

mind-altering, anger-and irritability-increasing medications they caused to be administered, ignoring their obligation to nurture him or raise him properly, clearly constitute the outrageous inflicting of harm on Elijah.

184. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of his ability to earn money and aggravation of a previously existing condition. His losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

**COUNT XV - KARINA'S CLAIMS FOR VIOLATION OF  
AMERICANS WITH DISABILITIES ACT AS TO HKI DEFENDANTS**

\_\_\_\_\_ Plaintiff Karina realleges paragraphs 1 through 25, 47 through 60, 62 through 71, 75, 79 through 80 and 87 through 84, and further alleges:

185. At all times material, as set forth above the minor Plaintiff has suffered from mental health disabilities and developmental disabilities and is within the group protected

by the Americans with Disabilities Act.

186. Pursuant to the Americans with Disabilities Act, it is the obligation of the HKI Defendants to make reasonable accommodations for the existing and perceived disabilities and impairments of the Plaintiff and those similarly situated, so that they can access services such as effective adoption recruitment services in a manner comparable to those without disabilities.

187. The policy of denying the impaired Plaintiffs targeted proactive recruitment services is improperly discriminatory and violative of the ADA.

188. The actions of the HKI Defendants in improperly and inappropriately keeping youngsters such as the Plaintiff locked up and on mind-altering psychotropic medications constitutes an impermissible denial of adoption services as well as assault and battery of the Plaintiff, and reflects the joint plan of the HKI Defendants to deprive mentally disabled and impaired children such as Plaintiff of their right to families, to be in the least restrictive appropriate placement, and to effective adoption recruitment services that will allow them to be moved to permanency expeditiously.

189. At all times material, the HKI Defendants have been aware of these rights, and all have been acting in a manner to

thwart them, to the Plaintiff's detriment.

190. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of her ability to earn money and aggravation of a previously existing condition. Her losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

191. Plaintiff has had to retain counsel, and is obligated to pay reasonable attorneys' fees; Defendants are obligated to pay said fees pursuant to the ADA.

**COUNT XVI - KARINA'S CLAIMS FOR VIOLATION OF  
AMERICANS WITH DISABILITIES ACT AS TO DCAF, SHELDON AND COX**

\_\_\_\_\_ Plaintiff Karina realleges paragraphs 1 through 25, 47 through 60, 62 through 71, 75, 79 through 80 and 87 through 95, and further alleges:

192. At all times material, as set forth above the minor Plaintiff has suffered from mental health disabilities and developmental disabilities and is within the group protected

by the Americans with Disabilities Act.

193. Pursuant to the Americans with Disabilities Act, it is the obligation of the DCAF, Sheldon and Cox to make reasonable accommodations for the existing and perceived disabilities and impairments of the Plaintiff and those similarly situated, so that they can access services such as effective adoption recruitment services in a manner comparable to those without disabilities.

194. The policy of denying the impaired Plaintiffs targeted proactive recruitment services is improperly discriminatory and violative of the ADA.

195. The actions of DCAF, Sheldon and Cox in improperly and inappropriately keeping youngsters such as the Plaintiff locked up and on mind-altering psychotropic medications constitutes an impermissible denial of adoption services as well as assault and battery of the Plaintiff, and reflects the joint plan of the DCAF, Sheldon and Cox to deprive mentally disabled and impaired children such as Plaintiff of their right to families, to be in the least restrictive appropriate placement, and to effective adoption recruitment services that will allow them to be moved to permanency expeditiously.

196. At all times material, DCAF, Sheldon and Cox have been aware of these rights, and all have been acting in a

manner to thwart them, to the Plaintiff's detriment.

197. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of her ability to earn money and aggravation of a previously existing condition. Her losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

198. Plaintiff has had to retain counsel, and is obligated to pay a reasonable attorneys fee; Defendants are obligated to pay said fees pursuant to the ADA.

**COUNT XVII - KARINA'S CLAIMS FOR VIOLATION OF  
AMERICANS WITH DISABILITIES ACT AS TO AHCA, BENSON AND HEALTH**

\_\_\_\_\_ Plaintiff Karina realleges paragraphs 1 through 25, 47 through 60, 62 through 71, 75, 79 through 80 and 87 through 95, and further alleges:

199. At all times material, as set forth above the minor Plaintiff has suffered from mental health disabilities and developmental disabilities and is within the group protected

by the Americans with Disabilities Act.

200. Pursuant to the Americans with Disabilities Act, it is the obligation of Defendants AHCA, Benson and Health to make reasonable accommodations for the existing and perceived disabilities and impairments of the Plaintiff and those similarly situated, so that they can access services such as effective adoption recruitment services in a manner comparable to those without disabilities.

201. The policy of denying the impaired Plaintiffs targeted proactive recruitment services is improperly discriminatory and violative of the ADA.

202. The actions of Defendants AHCA, Benson and Health in improperly and inappropriately keeping youngsters such as the Plaintiff locked up and on mind-altering psychotropic medications constitutes an impermissible denial of adoption services as well as assault and battery of the Plaintiff, and reflects the joint plan of Defendants AHCA, Benson and Health to deprive mentally disabled and impaired children such as Plaintiff of their right to families, to be in the least restrictive appropriate placement, and to effective adoption recruitment services that will allow them to be moved to permanency expeditiously.

203. At all times material, Defendants AHCA, Benson and



Health have been aware of these rights, and all have been acting in a manner to thwart them, to the Plaintiff's detriment.

204. Defendants Benson, Health and AHCA have also been ignoring information available as to medical providers known to prescribe excessive amounts of psychiatric medication in an off label manner, yet Secretary Benson and AHCA continue to not only tolerate such conduct, but have ratified and condoned such conduct by choosing to allow payment of the costs associated through the Medicaid system even in the absence of the mandated court orders and informed consent, resulting in further harm to the Plaintiff.

205. Plaintiff has had to retain counsel, and is obligated to pay a reasonable attorneys fee; Defendants are obligated to pay said fees pursuant to the ADA.

206. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of her ability to earn money and aggravation of a previously existing condition. Her losses

are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

**COUNT XVIII - ELIJAH'S CLAIMS FOR VIOLATION OF  
AMERICANS WITH DISABILITIES ACT AS TO HKI DEFENDANTS**

\_\_\_\_\_ Plaintiff Elijah realleges paragraphs 1 through 25, 47 through 59, 61, 67 and 72 through 95, and further alleges:

207. At all times material, as set forth above the minor Plaintiff has suffered from mental health disabilities and developmental disabilities, and is within the group protected by the American's with Disabilities Act.

208. Pursuant to the Americans with Disabilities Act, it is the obligation of the HKI Defendants to make reasonable accommodations for the existing and perceived disabilities and impairments of the Plaintiff and those similarly situated, so that they can access services such as effective adoption recruitment services in a manner comparable to those without disabilities.

209. The policy of denying the impaired Plaintiffs targeted proactive recruitment services is improperly discriminatory and violative of ADA.

210. The actions of the HKI Defendants in improperly and inappropriately keeping youngsters such as the Plaintiff

locked up and on mind-altering psychotropic medications constitutes an impermissible denial of adoption services as well as assault and battery of the Plaintiff, and reflects the joint plan of the HKI Defendants to deprive mentally disabled and impaired children such as Plaintiff of their right to families, to be in the least restrictive appropriate placement, and to effective adoption recruitment services that will allow them to be moved to permanency expeditiously.

211. At all times material, HKI Defendants have been aware of these rights, and all have been acting in a manner to thwart them, to the Plaintiff's detriment.

212. Plaintiff has had to retain counsel, and is obligated to pay a reasonable attorneys fee; Defendants are obligated to pay said fees pursuant to the ADA.

213. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of his ability to earn money and aggravation of a previously existing condition. His losses are permanent and continuing, and Plaintiff will suffer the

losses in the future, including the need for long-term care and assistance.

**COUNT XIX - ELIJAH'S CLAIMS FOR VIOLATION OF  
AMERICANS WITH DISABILITIES ACT AS TO DCAF, SHELDON AND COX**

\_\_\_\_\_ Plaintiff Elijah realleges paragraphs 1 through 25, 47 through 59, 61, 67 and 72 through 95, and further alleges:

214. At all times material, as set forth above the minor Plaintiff has suffered from mental health disabilities and developmental disabilities, and is within the group protected by the American's with Disabilities Act.

215. Pursuant to the Americans with Disabilities Act, it is the obligation of Defendants DCAF, Sheldon and Cox to make reasonable accommodations for the existing and perceived disabilities and impairments of the Plaintiff and those similarly situated, so that they can access services such as effective adoption recruitment services in a manner comparable to those without disabilities.

216. The policy of denying the impaired Plaintiffs targeted proactive recruitment services is improperly discriminatory and violative of ADA.

217. The actions of Defendants DCAF, Sheldon and Cox in improperly and inappropriately keeping youngsters such as the Plaintiff locked up and on mind-altering psychotropic

medications constitutes an impermissible denial of adoption services as well as assault and battery of the Plaintiff, and reflects the joint plan of Defendants DCAF, Sheldon and Cox to deprive mentally disabled and impaired children such as Plaintiff of their right to families, to be in the least restrictive appropriate placement, and to effective adoption recruitment services that will allow them to be moved to permanency expeditiously.

218. At all times material, Defendants DCAF, Sheldon and Cox have been aware of these rights, and all have been acting in a manner to thwart them, to the Plaintiff's detriment.

219. Plaintiff has had to retain counsel, and is obligated to pay a reasonable attorneys fee; Defendants are obligated to pay said fees pursuant to the ADA.

220. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of his ability to earn money and aggravation of a previously existing condition. His losses are permanent and continuing, and Plaintiff will suffer the

losses in the future, including the need for long-term care and assistance.

**COUNT XX - ELIJAH'S CLAIMS FOR VIOLATION OF  
AMERICANS WITH DISABILITIES ACT AS TO AHCA, BENSON and HEALTH**

\_\_\_\_\_ Plaintiff Elijah realleges paragraphs 1 through 25, 47 through 59, 61, 67 and 72 through 95, and further alleges:

221. At all times material, as set forth above the minor Plaintiff has suffered from mental health disabilities and developmental disabilities, and is within the group protected by the American's with Disabilities Act.

222. Pursuant to the Americans with Disabilities Act, it is the obligation of Defendants AHCA, Benson and Health to make reasonable accommodations for the existing and perceived disabilities and impairments of the Plaintiff and those similarly situated, so that they can access services such as effective adoption recruitment services in a manner comparable to those without disabilities.

223. The policy of denying the impaired Plaintiffs targeted proactive recruitment services is improperly discriminatory and violative of ADA.

224. The actions of Defendants AHCA, Benson and Health in improperly and inappropriately keeping youngsters such as the Plaintiff locked up and on mind-altering psychotropic

medications constitutes an impermissible denial of adoption services as well as assault and battery of the Plaintiff, and reflects the joint plan of Defendants AHCA, Benson and Health to deprive mentally disabled and impaired children such as Plaintiff of their right to families, to be in the least restrictive appropriate placement, and to effective adoption recruitment services that will allow them to be moved to permanency expeditiously.

225. At all times material, Defendants AHCA, Benson and Health have been aware of these rights, and all have been acting in a manner to thwart them, to the Plaintiff's detriment.

226. Defendant Benson and AHCA have also been ignoring information available as to medical providers known to prescribe excessive amounts of psychiatric medication in an off label manner, yet Secretary Benson and AHCA continue to not only tolerate such conduct, but have ratified and condoned such conduct by choosing to allow payment of the costs associated through the Medicaid system even in the absence of the mandated court orders and informed consent, resulting in further harm to the Plaintiff.

227. Plaintiff has had to retain counsel, and is obligated to pay a reasonable attorneys fee; Defendants are

obligated to pay said fees pursuant to the ADA.

228. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, severe reactive attachment disorder, disability, mental anguish, emotional distress, loss of capacity for the enjoyment of life, interference with education, the expense of remedial education, expense of hospitalization, medical and nursing, counseling care and treatment, reduction of his ability to earn money and aggravation of a previously existing condition. His losses are permanent and continuing, and Plaintiff will suffer the losses in the future, including the need for long-term care and assistance.

WHEREFORE Plaintiffs request:

1. Entry of an injunction as set forth in Counts I and II compelling an immediate end to the unlawful practices of the Defendants as aforesaid plus fees and costs; and

2. Entry of a judgment in the full amount of the damages sustained by Karina Smith and in the full amount of the damages sustained by Elijah Moses, plus costs and attorneys fees and such further relief as the Court deems appropriate.



Plaintiffs also demand trial by jury of all issues so triable as of right.

Dated this 23rd day of September, 2009.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-mailed, faxed and/or mailed this 23rd day of September, 2009 to all parties on the service list.

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